

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK 05-83145
)	
THOMAS M. PETERSEN,)	CH. 13
)	
Debtor(s).)	Filing No. 7, 14

ORDER

Hearing was held in Omaha, Nebraska, on September 6, 2005, regarding Filing No. 7, Motion for Relief from Stay, filed by First Savings Bank, and Filing No. 14, Resistance, filed by the debtor. Joel Carney appeared for First Savings Bank. The debtor failed to appear.

The debtor in this case owns residential real estate and the creditor holds a deed of trust securing the promissory note with regard to the real estate. Prior to this bankruptcy filing, the note matured. Upon the attempt by the creditor to foreclose on the property, the debtor filed a prior case at Case No. BK05-82463, which was dismissed for failure to file schedules. When the creditor once again rescheduled the foreclosure sale, the debtor filed the current case, Case No. BK05-83145.

It is the position of the creditor that it should be granted relief from the automatic stay because the debtor has no ability under Chapter 13 to stretch out the payments due under the note, because the note has matured and there are no payments due, other than full payment. The creditor cites In re Fuentes, 167 B.R. 901 (Bankr. E.D. Mo. 1994). In that case, the bankruptcy court held that stretching out the payment of arrearages on notes that matured pre-petition was an impermissible modification of the note holder's rights. I agree with the lesson of that case. The Bankruptcy Code, at 11 U.S.C. § 1322(b)(2), prohibits a debtor from modifying the rights of a holder of a secured claim secured only by a security interest in real property that is the debtor's principal residence. Since this claim has matured, any attempt to recreate terms of payment would amount to a modification which is prohibited.

The motion for relief is granted.

SO ORDERED.

DATED this 8th day of September, 2005.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:
Thomas M. Petersen
*Joel Carney
U.S. Trustee

*Movant is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.